

AO 120 (Rev.3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised
that a court action has been filed in the U.S. District Court San Diego on the following Patents or Trademarks:

DOCKET NO.	DATE FILED	U.S. DISTRICT COURT
2	02/14/2007	United States District Court, Southern District of California
PLAINTIFF	DEFENDANT	
Synthes (U.S.A.)	G.M. Dos Reis Jr. Ind. Com. De Equip. Medico	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 7,128,744	10/31/2006	Synthes
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4		
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In the above-entitled case, the following patent(s)/trademark(s) have been included:

DATE INCLUDED	INCLUDED BY			
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading			
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK		
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In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT		FILED FEB 14 2007 CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA DEPUTY BY	
CLERK	(BY) DEPUTY CLERK <i>[Signature]</i>	DATE 4/11/2007	

Copy 1 - Upon initiation of action, mail this copy to Director

Copy 2 - Upon filing document adding patent(s), mail this copy to Director

Copy 3 - Upon termination of action, mail this copy to Director

Copy 4 - Case file copy

1 jurisdiction over that defendant. *Id.* at 63-64. The personally served defendant was sued in his
 2 individual capacity but was also an officer of the remaining two defendants who were business
 3 entities. *Id.* at 63 n.10. Without discussing the issue or citing any legal authority, the court
 4 expressed its belief that personal service on the individual also conferred personal jurisdiction on
 5 the entity defendants. *Id.* Defendants had not briefed and had waived this issue. *Id.* at 64.
 6 *Northern Light* is therefore not persuasive on the point that personal service in the forum on a
 7 corporate officer confers personal jurisdiction over the corporation. Furthermore, *Oyuela* is not
 8 binding and, based on the foregoing, not persuasive. *See also Wenche Siemer v. Learjet*
 9 *Acquisition Corp.*, 966 F.2d 179, 182 (5th Cir. 1992) (“*Burnham* did not involve a corporation
 10 and did not decide any jurisdictional issue pertaining to corporations.”) The court therefore
 11 finds that Synthes cannot base personal jurisdiction over GMReis solely on personal service of
 12 its CEO in the United States.

13 Last, Synthes argues the court should assert personal jurisdiction over GMReis as a
 14 sanction for failure to comply with its jurisdictional discovery requests as ordered in the January
 15 8, 2008 order. Sanctioning a party pursuant to Rule 37(b)(2) for failure to comply with
 16 jurisdictional discovery orders by presuming it is subject to personal jurisdiction does not in
 17 itself violate due process. *Ins. Corp. of Ireland, Ltd. v. Compagnie de Bauxites de Guineia*, 456
 18 U.S. 694 (1982). Because the court finds that the sanction would be unjust under the
 19 circumstances of this case, the court declines to sanction GMReis by finding it subject to
 20 personal jurisdiction.

21 Synthes contends that GMReis failed to produce several categories of documents
 22 pertaining to trade shows and communications with persons in the United States about the
 23 purchase or sale of products or components to or by GMReis. (Opp’n at 5-6.) In addition,
 24 Synthes was unable to depose Jose Luiz Lecumberri.

25 Synthes deposed Mr. Reis in his personal capacity and on behalf of GMReis pursuant to
 26 Rule 30(b)(6). He testified that his staff and Mr. Lecumberri made a search for the documents
 27 requested and produced all the responsive documents GMReis had. (*See* Reis Dep. at 40 *et seq.*)
 28 To the extent documents were not produced, Mr. Reis testified on the subject matter of the

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2 document requests. The court therefore cannot find that GMReis violated the January 8, 2008
3 order.

4 On January 8, 2008, the court ordered that Messrs. Reis and Lecumberri's depositions be
5 taken in the United States under Federal Rules of Civil Procedure, rather than in Brazil under
6 discovery laws of Brazil. The court also informed the parties that due to their four prior joint
7 motions to continue the briefing schedules and hearing dates on GMReis' motion to dismiss, it
8 would not entertain any further requests for continuances related to this motion.

9 Pursuant to GMReis' offer, Synthes noticed the depositions for February 11, 2008. On
10 February 10, GMReis informed Synthes counsel that Mr. Lecumberri's wife had been
11 hospitalized with Dengue fever. Mr. Lecumberri therefore could not travel to the United States
12 for deposition, but could be made available upon his wife's recovery. On February 11, Mr. Reis
13 was deposed. On February 19, Synthes filed its opposition papers without the benefit of Mr.
14 Lecumberri's deposition. From March 5 to 8, GMReis exhibited at the AAOS annual meeting in
15 San Francisco, California, with Mr. Lecumberri in attendance. GMReis' counsel explains that
16 due to a miscommunication with his client, Mr. Lecumberri was not offered for deposition at that
17 time. At some time prior to Synthes' ex parte application to file declaration of I.V. Hall, the
18 counsel met and conferred regarding the declaration, but did not discuss resolving the issue of
19 Mr. Lecumberri's deposition.

20 The cooperation and communication between counsel in this case leaves much to be
21 desired. GMReis was aware of Synthes' request to depose Mr. Lecumberri, but apparently did
22 not adequately follow through with him to provide Synthes with available dates. On the other
23 hand, it appears that Synthes did not follow through after February 11 in an attempt to
24 reschedule Mr. Lecumberri's deposition, but silently waited for a call from GMReis. In
25 addition, Synthes did not contact the Magistrate Judge for resolution of this discovery issue, *see*
26 Civ. Loc. R. 72.1(b) & 26.1(e), and did not meet and confer with GMReis in an attempt to
27 resolve it as required by Civil Local Rule 26.1(a) prior to filing any Rule 37 motions. Moreover,
28 after the close of briefing , Synthes sought leave to file Mr. Hall's declaration to further support

1 its opposition to GMReis' motion to dismiss. It did not seek leave to do the same with any
2 information it may have obtained from Mr. Lecumberri's belated deposition. Synthes'
3 predicament is therefore at least in part caused by its own conduct. Imposing sanctions on
4 GMReis would therefore be unjust.

5 Furthermore, not deposing Mr. Lecumberri does not prejudice Synthes. Synthes intended
6 to depose Mr. Lecumberri about communications with customers and potential customers before,
7 during and after trade shows, including communications about pricing. (*Id.* at 6-7.) Because
8 GMReis' trade show activities were not directed to United States residents, Mr. Lecumberri's
9 deposition would not change the court's findings regarding personal jurisdiction.

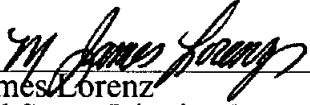
10 For the foregoing reasons, Synthes' ex parte application to file declaration of I.V. Hall is
11 **GRANTED**. GMReis' motion to dismiss is **GRANTED** and the case is **DISMISSED**
12 **WITHOUT PREJUDICE** for lack of personal jurisdiction.

13

14 **IT IS SO ORDERED.**

15

16 DATED: March 21, 2008

17 
18 M. James Lorenz
United States District Court Judge

19 COPY TO:

20 HON. ANTHONY J. BATTAGLIA
UNITED STATES MAGISTRATE JUDGE
21 ALL PARTIES/COUNSEL

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

**SYNTHES (U.S.A.), a Pennsylvania
partnership,**

Plaintiff,

v.

G.M. DOS REIS JR. IND. COM. DE EQUIP. MEDICO A/K/A GMREIS, a Brazilian corporation.

Defendant.

Civil No. 07-CV-309-L(AJB)

**ORDER (1) GRANTING
PLAINTIFF'S EX PARTE
APPLICATION TO FILE
DECLARATION OF I.V. HALL; (2)
GRANTING DEFENDANT'S
MOTION TO DISMISS; AND (3)
DISMISSING ACTION WITHOUT
PREJUDICE FOR LACK OF
PERSONAL JURISDICTION**

In this patent infringement action, Defendant G.M. dos Reis Jr. Ind. Com. de Equip.

19 Mexico a/k/a GMReis (“GMReis”), a Brazilian corporation, brought a motion to dismiss for lack
20 of personal jurisdiction. Plaintiff Synthes (U.S.A.) (“Synthes”) opposed the motion.¹ After the
21 close of briefing, Synthes filed an ex parte application for leave to file declaration of I.V. Hall in
22 opposition to GMReis motion to dismiss. For good cause having been shown, Synthes’ ex parte
23 application is **GRANTED**. In deciding GMReis’ motion to dismiss, the court considered Mr.
24 Hall’s declaration, attached as Exhibit A to Synthes’ ex parte application. For the reasons which

¹ In its papers, Synthes cited to the deposition testimony of Marin dos Reis, Jr., GMReis CEO, and filed an excerpt of the transcript. However, the deposition excerpt filed by Synthes, even when read together with the excerpt filed by GMReis in its reply papers, did not include all the pages referenced in the points and authorities. The court considered only the facts supported by the deposition excerpts.

1 follow, GMReis's motion to dismiss is **GRANTED**. The case is **DISMISSED WITHOUT**
2 **PREJUDICE** for lack of personal jurisdiction.

3 Synthes is a global medical device company which designs, manufactures and markets
4 skeletal fixation devices. Synthes is the assignee of United States Patent No. 7,127,744 (the
5 "744 Patent"). GMReis is a Brazilian company headquartered in Brazil. It designs,
6 manufactures and sells orthopedic and neurosurgical medical devices. Synthes alleges GMReis
7 is subject to personal jurisdiction in this court because it imported into the United States and/or
8 offered to sell locking bone plates which infringe the '744 Patent. Specifically, Synthes alleges
9 that GMReis displayed the locking plates at the 2007 American Association of Orthopaedic
10 Surgeons ("AAOS") Annual Meeting in San Diego, California for the purpose of generating
11 interest in infringing products to the commercial detriment of the rightful patentee.

12 The court granted Synthes' motion to compel jurisdictional discovery. In discovery,
13 Synthes learned that GMReis attended several trade shows in the United States since 2003. It
14 exhibited every year for the last five years at the AAOS annual meeting, and exhibited again at
15 the beginning of March 2008. It exhibited at least once and possibly more often at the North
16 American Spine Society conference, once at the World Spine, and once at the Brazilian North
17 American Spine Meeting in New York. In addition, GMReis CEO Geraldo Marin dos Reis, Jr.,
18 made a presentation at the In Spine and Orthopedics conference. GMReis has made one sale of
19 its products in the United States to a veterinary supply company, which did not result in repeat
20 business. GMReis has purchased parts from two suppliers in the past and currently purchases a
21 product from one supplier in the United States. GMReis resells in Brazil one product it
22 purchases in the United States. GMReis has purchased one machine in the United States, which
23 is used in its manufacturing process in Brazil. In addition, GMReis representatives have met and
24 consulted with two companies in the United States to explore potential suppliers and product
25 development. Synthes does not contend that the sale for veterinary application in the United
26 States, any of the parts, products or the machine purchased in the United States or exploratory
27 contacts in the United States involved the alleged infringing product.

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1 GMReis contends it has no offices, employees, distributors or assets in the United States.
2 All of its manufacturing is in Brazil. It sells the products it manufactures and also resells some
3 products purchased elsewhere. The resale part of the business is limited to customers in Brazil.
4 Only one to two percent of GMReis income is derived from sales abroad. The remaining 98 to
5 99 percent is derived from sales in Brazil. GMReis sales abroad are made in Latin America,
6 Europe and Middle East. GMReis attends trade shows and conferences in those regions. With
7 the exception of a one-time sale to a veterinary supplier, GMReis does not ship to or sell its
8 products in the United States because they are not approved by the Food and Drug
9 Administration (“FDA”). GMReis has not applied for FDA approval. The GMReis booth and
10 its product literature at trade shows in the United States state that the products are not FDA
11 approved and are not for sale in the United States. GMReis exhibits at trade shows in the United
12 States to generate interest in the products among surgeons, medical device distributors and other
13 medical professionals from outside the Untied States, who often attend conferences and trade
14 shows in the United States. No United States residents provided contact information at GMReis’
15 booth at the 2007 AAOS annual meeting to obtain information about its products. Two inquiries
16 from United States after the 2007 AAOS annual meeting came to GMReis website. The
17 inquiries were whether certain products will be available in the United States in the future or will
18 participate in clinical trials for approval in the United States. GMReis responded that its
19 products are not FDA approved, not available in the United States market, and will not be
20 launched in the United States. There were no further communications with these two parties.

21 Synthes does not contend that the products involved were the allegedly infringing products. No
22 product sales were made as a result of GMReis’ attendance of the 2007 AAOS annual meeting.

23 Synthes argues this court has personal jurisdiction based on GMReis’ contacts with
24 California, or in the alternative, based on GMReis’ contacts with the United States pursuant to
25 Federal Rules of Civil Procedure 4(k)(2).

26 The regional circuit law typically applies to “procedural matters that are not unique to
27 patent law.” *Beverly Hills Fan Co. v. Royal Sovereign Corp.*, 21 F.3d 1558, 1564 (Fed. Cir.
28 1994). However, “where the personal jurisdiction inquiry is intimately involved with the

1 substance of the patent laws," Federal Circuit law applies. *Elec. for Imaging, Inc. v. Coyle*, 340
 2 F.3d 1344, 1348 (Fed. Cir. 2003); *see also Beverly Hills Fan*, 21 F.3d at 1564.

3 The plaintiff has the burden to show personal jurisdiction.

4 [W]here the district court's disposition as to the personal jurisdictional question is
 5 based on affidavits and other written materials in the absence of an evidentiary
 6 hearing, a plaintiff need only to make a prima facie showing that defendants are
 7 subject to personal jurisdiction. In the procedural posture of a motion to dismiss, a
 8 district court must accept the uncontested allegations in the plaintiff's complaint
 9 as true and resolve any factual conflicts in the affidavits in the plaintiff's favor.

10 *Elec. for Imaging*, 340 F.3d at 1349 (internal citations omitted).

11 "There are two kinds of personal jurisdiction - specific and general. Specific jurisdiction
 12 arises out of or relates to the cause of action even if those contacts are isolated and sporadic.
 13 General jurisdiction arises when a defendant maintains continuous and systematic contacts with
 14 the forum state even when the cause of action has no relation to those contacts." *Trintec Indus., Inc. v. Pedre Promotional Prod., Inc.*, 395 F.3d 1275, 1279 (Fed. Cir. 2005) (internal quotation
 15 marks and citations omitted).

16 Rule 4(k)(2) provides in pertinent part:

17 Federal Claim Outside State-Court Jurisdiction. For a claim that arises under
 18 federal law, serving a summons or filing a waiver of service establishes personal
 19 jurisdiction over a defendant if:

- 20 (A) the defendant is not subject to jurisdiction in any state's courts of general
 21 jurisdiction; and
- 22 (B) exercising jurisdiction is consistent with the United States Constitution and
 23 laws.

24 The parties cite to no Federal Circuit case law applying Rule 4(k)(2) and the court has not found
 25 any. Furthermore, Rule 4(k)(2) does not involve procedural issues unique to patent law and is
 26 not intimately involved with the substance of the patent laws. The court therefore looks to Ninth
 27 Circuit case law for application of this rule.

28 Rule 4(k)(2) applies to general and specific jurisdiction. *See Holland Am. Line Inc. v. Wärtsilä N. Am., Inc.*, 485 F.3d 450, 459 (9th Cir. 2007) (internal citations omitted), citing
Consol. Dev. Corp. v. Sheritt, Inc., 216 F.3d 1286, 1291-92 (11th Cir. 2000) (discussing both
 29 general and specific jurisdiction under Rule 4(k)(2)).

Rule 4(k)(2) is not limited to the contours of a state longarm statute. Instead, a court may exercise jurisdiction when three requirements are met. First, the claim

1 against the defendant must arise under federal law Second, the defendant
 2 must not be subject to the personal jurisdiction of any state court of general
 3 jurisdiction. Third, the federal court's exercise of personal jurisdiction must
 4 comport with due process.

5 *Holland Am. Line*, 485 F.3d at 461 (internal citations omitted).

6 As to the first requirement, it is undisputed that Synthes' patent claim arises under federal
 7 law. As to the second requirement,

8 If . . . the defendant contends that he cannot be sued in the forum state and refuses
 9 to identify any other [state] where suit is possible, then the federal court is entitled
 10 to use Rule 4(k)(2). This procedure makes it unnecessary to traipse through the 50
 11 states, asking whether each could entertain the suit.

12 *Id.*, quoting *ISI Int'l, Inc. v. Borden Ladner Gervais LLP*, 256 F.3d 548, 552 (7th Cir. 2001).

13 GMReis strenuously argues it is not subject to personal jurisdiction in California, and asserts that
 14 no forum in the United States would be appropriate. (Def.'s Mem. of P.&A. at 13 n.8.)

15 Accordingly, the second requirement does not preclude the use of Rule 4(k)(2).

16 As to the third requirement, “[t]he due process analysis under Rule 4(k)(2) is nearly
 17 identical to traditional personal jurisdiction analysis with one significant difference: rather than
 18 considering contacts between the [defendant] and the forum state, we consider contacts with the
 19 nation as a whole.” *Holland Am. Line*, 485 F.3d at 462 (citations omitted).

20 To be subject to general jurisdiction, a defendant's contacts with the forum must be
 21 “continuous and systematic.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408,
 22 416 (1984); *LSI Indus. Inc. v Hubbell Lighting, Inc.*, 232 F.3d 1369, 1375 (Fed. Cir. 2000).
 23 “Neither the United States Supreme Court nor this court has outlined a specific test to follow
 24 when analyzing whether a defendant's activities within the state are ‘continuous and
 25 systematic.’” *LSI Indus.*, 232 F.3d at 1375.

26 The totality of Synthes' general jurisdiction argument is, “Notwithstanding the failure of
 27 GMReis to provide adequate discovery regarding its business activities in the United States, the
 28 evidence uncovered to date demonstrates the ‘continuous and systematic’ contacts that justify
 the

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2 exercise of general jurisdiction.”² (Opp’n at 14.) GMReis’ contacts with the United States are
3 no more continuous and systematic than the contacts found to be insufficient in *Helicopteros*
4 *Nacionales de Colombia, S.A. v. Hall*. The court therefore finds that GMReis is not subject to
5 general jurisdiction in the United States.

6 The court next considers whether GMReis’ contacts subject it to specific jurisdiction.

7 To determine whether jurisdiction over an out-of-state defendant comports with
8 due process, we look to whether (1) the defendant purposefully directed its
9 activities at residents of the forum state, (2) the claim arises out of or relates to the
10 defendant’s activities with the forum state, and (3) assertion of personal jurisdiction
11 is reasonable and fair. The first two factors correspond to the “minimum contacts”
12 prong of the . . . analysis [under *Int'l Shoe v. Washington*, 326 U.S. 310 (1945)],
13 and the third factor with the “fair play and substantial justice” prong. While the
14 plaintiff bears the burden to establish minimum contacts, upon this showing,
15 defendants must prove that the exercise of jurisdiction is unreasonable.

16 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28
Elec. for Imaging, 340 F.3d at 1350. For purposes of specific jurisdiction in a patent
infringement case, the court may consider defendant’s contacts with the forum before the grant
of the patent.³ See *Genetic Implant Sys., Inc. v. Core-Vent Corp.*, 123 F.3d 1455, 1458 (Fed. Cir.
1997).

16 17 18 19 20 21 22 23 24 25 26 27 28
It is undisputed that GMReis displayed its products at several trade shows in the United
States over several years. Synthes does not dispute that GMReis did not have FDA approval for
sale or use of its products in the United States, that its trade show displays and brochures
prominently disclosed that fact or that its intent was to attract interest from potential foreign
purchasers and not purchasers from the United States. Synthes relies heavily on *3D Systems Inc.*
v. Aerotech Labs., Inc., 160 F.3d 1373 (Fed. Cir. 1998), to support its argument the GMReis is
subject to specific jurisdiction. *3D Systems* is not analogous, however. In *3D Systems* the
defendant, among other contacts, sent offers to sell to and solicited orders of the allegedly

2 26 27
This argument is followed by the statement, “But, in this patent infringement
action, the issue whether general jurisdiction exists is irrelevant.” (Opp’n at 14.) It is unclear
whether Synthes intended to assert a general jurisdiction argument at all.

3 28
To the extent the court’s order filed January 8, 2008 is inconsistent with this
authority, it is hereby amended.

1 infringing product from the forum residents. 160 F.3d at 1378. The court therefore found that
 2 its actions were purposefully directed at the forum state residents. *Id.* This is not the case here,
 3 where GMReis expressly discouraged the forum residents from purchasing its products. Based
 4 on the foregoing, the court cannot find that GMReis' trade show activity demonstrates that
 5 GMReis purposefully directed its activities at United States residents.

6 On the other hand, GMReis had other contacts with the United States. It purchased
 7 certain parts and products, it made a sale to one customer for a veterinary application, and it
 8 explored supplier and product development options in the United States. In contrast with trade
 9 shows, these additional activities appear to have been purposefully directed at United States
 10 residents. GMReis' contacts with the United States therefore meet the first element of the
 11 minimum contacts analysis.

12 As to the second element, Synthes must show that its patent infringement claim arises out
 13 of or relates GMReis' activities in the United States. In support of its argument that Synthes'
 14 patent infringement claim does not arise out of and is not related to its activities in the United
 15 States, GMReis argues that its activities in the United States were insufficient for patent
 16 infringement under 35 U.S.C. § 271(a) by offering to sell or importing an infringing device. The
 17 court need not address this issue. "It is jurisdiction that is at issue, not liability for patent
 18 infringement." *Genetic Implant Sys.*, 123 F.3d at 1458.

19 Although the nexus necessary to satisfy the "arise out of or related to" requirement
 20 of the due process inquiry has not been clearly delineated by the Supreme Court,
 . . . it is significant that the constitutional catch-phrase is disjunctive in nature,
 21 indicating an added flexibility and signaling a relaxation of the applicable standard
 from a pure "arise out of" standard.

22 *Inamed Corp. v. Kuzmak*, 249 F.3d 1356, 1362 (Fed. Cir. 2001). The "arise out of or related to"
 23 requirement is not as stringent as to require a plaintiff to show liability or that plaintiff's
 24 allegations be sufficient to state a claim. See 5B Charles Alan Wright & Arthur R. Miller,
 25 *Federal Practice and Procedure* § 1351 at 269 (3d ed. 2004). Because GMReis' trade show
 26 activity was not directed at the United States residents, the trade show contacts do not support
 27 jurisdiction. GMReis' other contacts with the United States, however, are unrelated to Synthes'
 28 patent infringement claim, which is entirely based on GMReis' alleged display of certain

1 infringing locking bone plates at the 2007 AAOS annual meeting.

2 For the foregoing reasons, Synthes has not met its burden to make a *prima facie* showing
 3 that GMReis' minimum contacts with the United States were sufficient to establish specific
 4 personal jurisdiction. The court therefore need not consider whether the assertion of personal
 5 jurisdiction in the United States would be reasonable and fair or whether GMReis' contacts with
 6 the State of California would be sufficient for specific jurisdiction.

7 In a footnote, Synthes argues that personal jurisdiction could be based on personal service
 8 in the forum. While Mr. Reis was attending the AAOS trade show in February 2007, Synthes
 9 served him with the summons and the complaint.

10 Synthes relies on the proposition that a non-resident's transitory physical presence in the
 11 forum is one of the traditional bases of personal jurisdiction:

12 Among the most firmly established principles of personal jurisdiction in American
 13 tradition is that the courts of a State have jurisdiction over nonresidents who are
 14 physically present in the State. The view developed early that each State had the
 15 power to hale before its courts any individual who could be found within its
 borders, and that once having acquired jurisdiction over such a person by properly
 serving him with process, the State could retain jurisdiction to enter judgment
 against him, no matter how fleeting his visit.

16 *Burnham v. Super. Ct. (Burnham)*, 495 U.S. 604, 610-11 (1990) (Scalia, J., plurality opinion).
 17 However, in *Burnham* this principle was applied only to an individual in his individual capacity.
 18 It has not been applied to corporations. Although *Perkins v. Benguet Consolidated Mining*
 19 *Company* alludes to it in the context of a corporation, 342 U.S. 437, 444-45 (1952), its holding
 20 that due process did not preclude the exercise of personal jurisdiction was based on the analysis
 21 of the corporation's contacts with the forum, *see id.* at 447-48. The reasoning of *Burnham* is
 22 consistent. It noted that "corporations . . . have never fitted comfortably in a jurisdictional
 23 regime based primarily upon 'de facto power over the defendant's person.'" *Burnham*, 495 U.S.
 24 610 n.1, quoting *Int'l Shoe*, 326 U.S. at 316.

25 Synthes' argument is also based on *Oyuela v. Seacor Marine (Nigeria), Inc.*, 290 F. Supp.
 26 2d 713 (E.D. La. 2003). For the relevant proposition, *Oyuela* relies on *Northern Light*
 27 *Technology, Inc. v. Northern Lights Club*, 236 F.3d 57 (1st Cir. 2001). *Northern Light* held that
 28 personal service on an individual defendant in the forum state was sufficient to confer personal